

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:12-CV-385-FDW-DCK**

ARTHUR W. MASSEY,)	
)	
Plaintiff,)	
)	
v.)	<u>MEMORANDUM AND</u>
)	<u>RECOMMENDATION</u>
MICHAEL J. ASTRUE,)	<u>AND ORDER</u>
Commissioner of Social Security,)	
)	
Defendant.)	
)	

THIS MATTER IS BEFORE THE COURT regarding Defendant's "Motion To Dismiss" (Document No. 12) filed November 20, 2012, and what has been construed by the Court as Plaintiff's "Motion For Extension Of Time" (Document No. 15) filed December 6, 2012. These motions have been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and immediate review is appropriate. Having carefully considered the motions and the record, the undersigned will recommend that the motion to dismiss be denied, and will order that the motion for extension of time be granted.

Defendant seeks dismissal of this action based on the *pro se* Plaintiff's failure to abide by the Court's "Pretrial Scheduling Order" (Document No. 9), which ordered Plaintiff to file a Motion for Summary Judgment and Supporting memorandum of law by November 13, 2012. (Document No. 12). Plaintiff's pending motion states that he is currently in prison, and suggests that he will be unable to prosecute this lawsuit until his release in or about March 2013. (Document No. 15). Under these circumstances, the undersigned finds that the motion to dismiss is premature and that Plaintiff's request for additional time is reasonable.

IT IS, THEREFORE, ORDERED that Plaintiff's "Motion For Extension Of Time"

(Document No. 15) is **GRANTED** and that this matter is **STAYED** until **April 1, 2013**, or until otherwise ordered by the Court. Plaintiff shall file a Motion for Summary Judgment and Supporting memorandum of law, or a renewed motion for extension of time, including his current mailing address, on or before **April 1, 2013**.

IT IS RESPECTFULLY RECOMMENDED that Defendant's "Motion To Dismiss" (Document No. 12) be **DENIED WITHOUT PREJUDICE**.

TIME FOR OBJECTIONS

The parties are hereby advised that pursuant to 28 U.S.C. § 636(b)(1)(C), and Rule 72 of the Federal Rules of Civil Procedure, written objections to the proposed findings of fact, conclusions of law, and recommendation contained herein may be filed within **fourteen (14) days** of service of same. Responses to objections may be filed within fourteen (14) days after service of the objections. Fed.R.Civ.P. 72(b)(2). Failure to file objections to this Memorandum and Recommendation with the District Court constitutes a waiver of the right to de novo review by the District Court. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005). Moreover, failure to file timely objections will preclude the parties from raising such objections on appeal. Diamond, 416 F.3d at 316; Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003); Snyder v. Ridenhour, 889 F.2d 1363, 1365 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 147-48 (1985), reh'g denied, 474 U.S. 1111 (1986).

The Clerk of Court is directed to send a copies of this Memorandum And Recommendation And Order, to both addresses listed in Document No. 11 by certified U.S. mail, return receipt requested.

Signed: December 18, 2012



David C. Keesler
United States Magistrate Judge


